

## **Explanation of February 14, 2014 Changes to the Bankruptcy Local Rules**

Changes to the Bankruptcy Local Rules effective February 14, 2014 consist of the addition of six (6) rules related to the Supreme Court decision in *Stern v. Marshall*, 131 S.Ct. 2594 (2011). These rules with commentary and cross references appear below.

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### **Bankruptcy Local Rule 7008-1: Consent to Entry of Final Order or Judgment by Bankruptcy Court in Complaint, Counterclaim, Cross-Claim or Third Party Complaint**

In an adversary proceeding pending before a Bankruptcy Court, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of a final order or judgment by the Bankruptcy Court.

### **Bankruptcy Local Rule 7012-1: Consent to Entry of Final Order or Judgment by Bankruptcy Court in Responsive Pleading**

In an adversary proceeding pending before a Bankruptcy Court, a responsive pleading shall contain a statement that the pleader does or does not consent to entry of a final order or judgment by the Bankruptcy Court.

### **Bankruptcy Local Rule 7016-2: Determining Whether Bankruptcy Court May Enter Final Order or Judgment**

In an adversary proceeding pending before a Bankruptcy Court, the Bankruptcy Court shall, on the court's own motion or a party's timely motion, determine whether the proceeding is one in which the Bankruptcy Court may enter a final order or judgment.

#### **Commentary Re Local Rule 7016-2**

This rule confirms that it is for the Bankruptcy Court to determine whether it has the authority to enter a final order or judgment in a proceeding. A party's contention that the Bankruptcy Court lacks that authority will not by itself remove the proceeding from determination by the Bankruptcy Court. Absent withdrawal of the reference, the Bankruptcy Court shall retain the proceeding, and shall at the conclusion of the proceeding exercise the authority it determines to be proper.

CROSS-REFERENCES: B.L.R. 5011-2, B.L.R. 7008-1, B.L.R. 7012-1, B.L.R. 8001-2, B.L.R. 8010-2 and B.L.R. 9027-1.

## **Bankruptcy Local Rule 8001-2: Procedure for Challenging Bankruptcy Court's Authority to Enter Final Order or Judgment**

(a) In any instance in which the Bankruptcy Court has entered a final order or judgment and a party contends that the matter is one in which the Bankruptcy Court lacked constitutional or statutory authority to enter a final order or judgment, such party must:

(1) proceed by filing a timely notice of appeal of the Bankruptcy Court's final order or judgment; and

(2) to avoid a waiver of any right to review by the District Court, elect that the appeal of the final order or judgment be heard by the District Court in the manner set forth in 28 U.S.C. § 158(c)(1) and Bankruptcy Rule 8001(e).

(b) The requirements for the contents of the appellate briefs in a case in which a party contends that the Bankruptcy Court lacked authority to enter a final order or judgment are set forth in B.L.R. 8010-2.

### **Commentary Re Local Rule 8001-2**

Because the Bankruptcy Court decides whether it has authority to enter a final order or judgment, or whether it must submit proposed findings of fact and conclusions of law to the District Court, there will be instances in which the Bankruptcy Court will enter judgment in a case in which a party contends that the Bankruptcy Court had authority only to submit proposed findings and conclusions. This rule is intended to clarify two points about how the parties should proceed in such a case. First, the party seeking review must proceed by filing a notice of appeal, because that is the proper process for obtaining review of an order or judgment, even where the party seeking review believes that the Bankruptcy Court did not have authority to enter the order or judgment. Second, to preserve any right to de novo review by an Article III court, a party must elect to have the appeal heard by the District Court, rather than by the Bankruptcy Appellate Panel. Under District Court General Order 24, if the District Court agrees that the Bankruptcy Court should have issued proposed findings and conclusions, it can treat the decision of the Bankruptcy Court as proposed findings and conclusions subject to de novo review. The Bankruptcy Appellate Panel cannot itself provide de novo review under Article III. A party that does not avail itself of the opportunity to obtain de novo review by an Article III court may be found to have waived any right to such review.

CROSS REFERENCES: B.L.R. 8010-2, B.L.R. 9033-1, and District Court General Order 24, Sections 1.01(b) and (c).

## **Bankruptcy Local Rule 8010-2: Content of Briefs When Appeal Challenges Bankruptcy Court's Authority to Enter Final Order or Judgment**

Where the Bankruptcy Court has entered a final order or judgment, and a party contends that the Bankruptcy Court lacked constitutional or statutory authority to enter that final order or

judgment, such party shall file an appeal in the manner specified in B.L.R. 8001-2, and all parties' briefs to the District Court shall:

- (a) contain argument and information addressing whether the Bankruptcy Court had authority to enter the final order or judgment;
- (b) contain all argument and information that the brief must contain if it were undisputed that the Bankruptcy Court had authority to enter the final order or judgment; and
- (c) satisfy all the requirements of B.L.R. 9033-1, treating the findings of fact and conclusions of law of the Bankruptcy Court as proposed findings of fact and conclusions of law for that purpose.

#### **Commentary Re Local Rule 8010-2**

This rule is intended to clarify the issues that the parties must address in their appellate briefs to the District Court in a case in which the Bankruptcy Court has entered a final order or judgment, and a party contends on appeal that the Bankruptcy Court had authority only to submit proposed findings of fact and conclusions of law to the District Court. The briefs must address whether the Bankruptcy Court had authority to enter the order or judgment. The briefs must also address how the appeal should be resolved if the District Court determines that the Bankruptcy Court did have authority to enter the order or judgment. That is, the briefs must address whether the order or judgment should be affirmed under traditional standards of appellate review. Finally, the briefs must also address how the appeal should be resolved if the District Court determines that the Bankruptcy Court had authority only to submit proposed findings of fact and conclusions of law. In other words, the parties must satisfy all requirements that would apply if the Bankruptcy Court had submitted proposed findings of fact and conclusions of law to the District Court under B.L.R. 9033-1.

CROSS REFERENCES: B.L.R. 8001-2, B.L.R. 9033-1, and District Court General Order 24, Sections 1.01 (b) and (c).

#### **Bankruptcy Local Rule 9027-1: Removal**

- (a) A notice of removal shall contain a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the Bankruptcy Court.
- (b) Any party other than the party filing the notice of removal shall file a statement indicating whether the party does or does not consent to entry of final orders or judgment by the Bankruptcy Court as required by Bankruptcy Rule 9027(e)(3).

#### **Comment Re Local Rule 9027-1**

This rule incorporates for removed matters the requirement that the parties to a proceeding inform the Bankruptcy Court in their initial pleadings whether they consent to the entry of final order or judgment by the Bankruptcy Court. Subpart "a" requires the party filing the notice of removal to

include therein such a statement. Subpart “b” requires all other parties to include such a statement in a response filed within 14 days of the notice of removal. Parties who have not yet responded to a removed complaint should satisfy the requirements of B.L.R. 7012-1.

CROSS-REFERENCES: B.L.R. 7008-1, B.L.R. 7012-1